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CORRECTED APPEAL BRIEF dated 3 October 2008

OCT 03 2008

PATENT
Docket No. PD020075
Customer No. 24498

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants : Ulrich Gries
Serial No. : 10/523,210
Filed : January 27, 2005
Title : METHOD AND DEVICE FOR PERFORMING
COMMUNICATION ON A BUS STRUCTURED NETWORK
Art Unit : 2142
Examiner : Jason D. Recek

CORRECTED APPEAL BRIEF

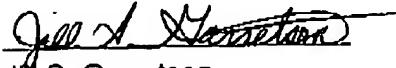
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May It Please the Honorable Board:

In response to the Office communication of 25 September 2008, the Appellant submits this corrected Brief on Appeal from the final rejection of Claims 1, 3 to 8, 10 and 11. Please charge any fees due in connection with this matter to Deposit Account No. 07-0832. The Appellant waives oral hearing. Enclosed is a single copy of this Brief.

CERTIFICATE OF TRANSMISSION

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The real party in interest of Application Serial No. 10/523,210 is the Assignee of record:

Thomson Licensing S.A.
46 Quai A. leGallo
F-92100 Boulogne-Billancourt
France

II. Related Appeals and Interferences

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 10/523,210 known to the undersigned attorney.

III. Status of Claims

Claims 1, 3 to 8, 10 and 11 have been rejected. The rejection of Claims 1, 3 to 8, 10 and 11 is appealed. Claims 2 and 9 have been cancelled.

IV. Status of Amendments

All amendments have been entered and are reflected in the claims included in Appendix I. No amendment was filed after the Final Rejection.

V. Summary of Claimed Subject Matter

Independent Claim 1 recites a method for performing communication on a bus structured network between a first device (AV1) and a plurality of second devices (AV2, LS1 to LS3, page 9, lines 3-5), comprising:

issuing a first control communication from said first device to a first at least one of said plurality of second devices by means of an asynchronous data communication (page 10, lines 21-24);

issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication (page 13, line 33 to page 14, line 3);

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issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication (page 14, lines 1-2) and comprising a first control command (page 14, line 2) to said first at least one of said plurality of second devices for controlling a functionality (volume) having an effect directly recognizable by a user if said first control command is not timely executed in said first at least one second device (page 14, lines 6-9).

Independent Claim 7 recites a network station for performing communication on a bus structured network between a first device and a plurality of second devices, said communication comprising issuing a first control communication from said first device to a first at least one of said plurality of second devices by means of an asynchronous data communication (page 11, lines 24-26), issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication, issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication and comprising a first control command to said first at least one of said plurality of second devices for controlling a functionality having an effect directly recognizable by a user if said first control command is not timely executed in said first at least one second device (page 12, lines 21-26), said network station including:

an interface to the network (page 9, lines 5-8);
means for performing said asynchronous data communication (page 9, lines 18-19);
means for performing said isochronous data communication (page 9, lines 19-20); and
means for using said isochronous data communication to communicate said second control communication (page 9, lines 30-33).

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VI. Ground of Rejection to be Reviewed on Appeal

The Examiner has rejected Claims 1, 4, 6 to 8 and 11 as anticipated under 35 USC 102(e) by US Patent Publication 2002/0026540 to Smyers.

The Examiner has rejected Claims 3 and 10 as unpatentable under 35 USC 103(a) over Smyers in view of US Patent 6,404,533 to Fergusson.

The Examiner has rejected Claim 5 as unpatentable under 35 USC 103(a) over Smyers in view of US patent 5,434,860 to Riddle.

VII. Argument

This invention relates to a method for performing communication on a bus structured network, and to a network station for performing communication on a bus structured network. The Appellant submits that the prior art which has been cited by the Examiner does not affect the patentability of the instant Claims.

35 USC 102

Independent Claims 1 and 7 have been rejected as anticipated under 35 USC 102(a) by Smyers. However nowhere does Smyers show or suggest:

"issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication;

issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication",

as specifically recited in Claim 1. Although Smyers uses an isochronous data communication, nowhere does Smyers show or suggest that a second control communication is included in the isochronous data communication. Rather, Smyers specifically states that the stream of data is transmitted on a data isochronous channel, and that the control communications include a real-time component transmitted on a control isochronous channel. See page 3, lines 21 to 24. It is therefore clear that

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because Smyers transmits data on one channel, and transmits control communications on a different channel, Smyers does *not* issue a second control communication included in the isochronous data communication which carries the data. It is therefore clear that Smyers does not affect the patentability of Claim 1.

Similarly, nowhere does Smyers show or suggest:

"issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication, issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication",

as specifically recited in Claim 7. Nowhere does Smyers show or suggest that a second control communication is included in the isochronous data communication. Rather, Smyers specifically states that the stream of data is transmitted on a data isochronous channel, and that the control communications include a real-time component transmitted on a control isochronous channel. See page 3, lines 21 to 24. It is therefore clear that because Smyers transmits data on one channel, and transmits control communications on a different channel, Smyers does not issue a second control communication included in the isochronous data communication which carries the data. It is therefore clear that Smyers does not affect the patentability of Claim 7.

It is therefore clear that the rejection of independent Claims 1 and 7 under 35 USC 102 as anticipated by Smyers is error. Dependent Claims 4, 6, 8 and 11 add further advantageous features to their parent Claims 1 or 7, and are therefore patentable as their parent claims.

35 USC 103

The Examiner has applied Smyers and Fergusson in rejecting dependent Claims 3 and 10 under 35 USC 103(a). Smyers has been discussed above. Fergusson relates to an optical fiber network driven by electronic circuits where each of the optical transmitters provides a light output, and the outputs are optically combined. The

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outputs are filtered by filters having different levels of opaqueness in order to separate the respective signals, or the optical transmitters each have a different level of semiconductor diffusion, causing the light from the plurality of transmitters to differ. See column 2, lines 38 to 52. Nowhere does Fergusson show or suggest:

"issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication;

issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication",

as specifically recited in Claim 1. Furthermore, nowhere does Fergusson show or suggest:

"issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication, issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication".

as specifically recited in Claim 7. It is therefore clear that even if the subject matter of Smyers and Fergusson were to be combined, the patentability of independent Claims 1 and 7 would not be affected, and that the patentability of dependent Claims 3 and 10 would similarly not be affected.

The Examiner has applied Smyers and Riddle to Claim 5. Riddle relates to flow controls for data streams using a single isochronous data stream connection. Nowhere does Riddle show or suggest:

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"issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication;

issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication",

as specifically recited in independent Claim 1. Furthermore nowhere does Riddle show or suggest:

"issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication, issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication",

as specifically recited in independent Claim 7. It is therefore clear that even if the subject matter of Smyers was to be combined with the subject matter of Riddle, the patentability of independent Claims 1 and 7 would not be affected, and that the patentability of dependent Claim 5 would similarly not be affected.

It is therefore clear that none of the cited references, taken either singly or in combination, affects the patentability of independent Claims 1 and 7.

Claim 3 to 6 are dependent from Claim 1 and add further advantageous features. The Appellant submits that these subclaims are patentable as their parent Claim 1.

Similarly, Claims 8, 10 and 11 are dependent from Claim 7, and add further advantageous features. The Appellant submits that these subclaims are patentable as their parent Claim 7.

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The Appellant therefore submits that the Examiner's rejection is error, and that the rejection of Claims 1, 3 to 8, 10 and 11 should be reversed.

Respectfully submitted,
Ulrich Gries

By



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APPENDIX 1 - APPEALED CLAIMS

1. A method for performing communication on a bus structured network between a first device and a plurality of second devices, comprising:
 - issuing a first control communication from said first device to a first at least one of said plurality of second devices by means of an asynchronous data communication;
 - issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication;
 - issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication and comprising a first control command to said first at least one of said plurality of second devices for controlling a functionality having an effect directly recognizable by a user if said first control command is not timely executed in said first at least one second device.
2. (cancelled)
3. The method according to claim 1, wherein said first control command is configured to control one of an audible parameter for at least one loudspeaker and a visible parameter for at least one display.
4. The method according to claim 1, wherein said first control command is sent in a repeated manner.
5. The method according to claim 1, further comprising detecting a disturbance on the communication network, determining a degree of said disturbance, and reducing a use of said isochronous data communication for said second control communication if said degree of disturbance exceeds a predetermined level.

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6. The method according to claim 1, wherein said first control communication to said first at least one second device includes a second control command, said first at least one second device communicating said second control command to a second at least one of said plurality of second devices by means of isochronous data communication from said first at least one second device to said second at least one second device.

7. A network station for performing communication on a bus structured network between a first device and a plurality of second devices, said communication comprising issuing a first control communication from said first device to a first at least one of said plurality of second devices by means of an asynchronous data communication, issuing real-time data communication from said first device to said first at least one of said plurality of second devices by means of an isochronous data communication, issuing a second control communication from said first device to said first at least one of said plurality of second devices, said second control communication being included in said isochronous data communication and comprising a first control command to said first at least one of said plurality of second devices for controlling a functionality having an effect directly recognizable by a user if said first control command is not timely executed in said first at least one second device, said network station including:

- an interface to the network;
- means for performing said asynchronous data communication;
- means for performing said isochronous data communication; and
- means for using said isochronous data communication to communicate said second control communication.

8. The network station according to claim 7, wherein said communication means include at least one of means for transmitting said first control command onto an isochronous channel and means for receiving said first control command from an isochronous channel.

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9. (cancelled)

10. The network station according to claim 7, wherein said first control command is configured to control one of an audible parameter for a number of loudspeakers and a visible parameter for controlling a number of displays.
11. The network station according to claim 7, wherein the network interface is an IEEE-1394-network interface.

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APPENDIX II EVIDENCE

None

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APPENDIX III RELATED PROCEEDINGS

None